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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,508	11/07/2001	Beerelli Seshi	0152.00418	8090

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EXAMINER

AFREMOVA, VERA

ART UNIT	PAPER NUMBER
1651	

DATE MAILED: 01/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/914,508</b>	Applicant(s) <b>Seshi et al.</b>	
	Examiner <b>Vera Afremova</b>	Art Unit <b>1651</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on Nov 7, 2001

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 21-41 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims 21-41 are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

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## **DETAILED ACTION**

### *Status of claims*

**Claims 21 as originally filed and new claims 22-41 are pending and subject to restriction requirement.**

Claims 1-20 are canceled by applicants [preliminary amendment filed 11/07/2001].

The numbering of new claims as presented in the preliminary amendment filed 11/07/2001 is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). Misnumbered new claims 21-40 [preliminary amendment filed 11/07/2001] been renumbered as 22-41.

New claims 28-30, 32-34 and 36-39 which correspond to the canceled claims 8-10, 12-14 and 16-19 and which are now depending of the canceled claims 6, 10, 14 are interpreted as being dependent on the newly submitted claims 27, 31 and 35 accordingly. Claims 21 and 41 are redundant.

### *Restriction*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

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In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 22-25, drawn to drawn to isolated pluri-differentiated mesenchymal progenitor cells or to therapeutic compositions comprising isolated pluri-differentiated mesenchymal progenitor cells and pharmaceutical carrier.

Group II, claim 26, drawn to a method for preparing or purifying pluri-differentiated mesenchymal progenitor cells.

Group III, claims 27-30, drawn to a method for enhancing bone marrow engraftment in a mammal by administering isolated pluri-differentiated mesenchymal progenitor cells.

Group IV, claims 31-34, drawn to a method for enhancing engraftment of hematopoietic progenitor cells in a mammal by administering isolated pluri-differentiated mesenchymal progenitor cells.

Group V, claims 35-39, drawn to a method for treating graft-versus-host disease (GvHD) in a mammal by administering isolated pluri-differentiated mesenchymal progenitor cells.

Group VI, claim 40, drawn to a method for diagnosing a disease state.

Group VII, claims 21 and 41, drawn to a method for identifying therapeutic targets for treating hematopoietic function.

The inventions listed as Groups do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The presently claimed product/composition with

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isolated and purified pluri-differentiated mesenchymal progenitor cells is known in the prior art.

For example: see US 5,942,225 [A] which discloses (fig. 1) isolated and purified mesenchymal progenitor cells which are expanded and/or induced to differentiate towards various lineages, thus, being pluri-differentiated. Therefore, the presently claimed product/composition does not avoid the prior art. Moreover, the claims are drawn to more than one of permissible combination of categories such as more than one of methods of using the product with pluri-differentiated mesenchymal progenitor cells, for example: various administration methods intended for treating various patients/conditions and various diagnosing methods intended for identification of disease state and/or therapeutic agents wherein the methods comprise distinct active steps, sites of actions, materials involved and state/conditions identified.

The several inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches (as indicated by different classification). The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the Invention of Group I would not necessarily anticipate or make obvious the any of the other groups. For these reasons restriction for examination purposes is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CAR 1.143).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (703) 308-9351. The examiner can normally be reached on Monday to Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Vera Afremova

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December 31, 2002.

VERA AFREMOVA

PATENT EXAMINER

